

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

LAWRENCE SCHWIGER,

Petitioner,

vs.

JACK PALMER, et al.,

Respondents.

3:07-cv-00382-LRH-RAM

ORDER

This action is a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, filed by petitioner, a prisoner at Lovelock Correctional Center. On January 11, 2008, the Court granted petitioner's application to proceed *in forma pauperis*. (Docket #5). The Court also denied petitioner's motion for the appointment of counsel. (*Id.*). Finally, the Court determined that the grounds for relief in the petition and motions related to petitioner's conviction are unexhausted in state court, as criminal appellate proceedings remain pending before the Nevada Supreme Court. (*Id.*). Petitioner was granted thirty days to file an amended petition showing when and how he exhausted his stated grounds for relief, and whether or not the referenced motions relating to his conviction are still pending in the Nevada Supreme Court. (*Id.*).

On January 29, 2008, petitioner filed a motion for clarification (Docket #7) and motion for reconsideration of the Court's denial of the appointment of counsel (Docket #8). Also on January 29, 2008, petitioner filed a memorandum to the Court concerning his petition. (Docket #9). Finally, on February 26, 2008, petitioner filed a supplement to his motions for clarification and reconsideration. (Docket #10).

1 The Court has reviewed all of petitioner's filings in this action. In his motion for clarification,
2 memorandum, and supplement, petitioner makes several statements that confirm that he has, in fact, not
3 exhausted the grounds contained in his federal habeas petition in state court. In his motion for
4 clarification, petitioner states that: "It is true that there are a few motions which were denied by the state
5 district court which are currently on appeal and pending before the Nevada Supreme Court." (Docket
6 #7, at p. 2). Petitioner also states that on December 26, 2007, he filed a motion to withdraw his *Alford*
7 plea in state district court, and the hearing on the motion was set for January 9, 2008. (Docket #7, at p.
8 3). Petitioner tells this Court that he does not know when the Nevada Supreme Court will decide his
9 appeal(s), and that he does not know the outcome of the motions filed in state district court. (*Id.*).
10 Plaintiff further tells this Court that if his motion is denied in state district court, he will appeal that
11 decision to the Nevada Supreme Court. (*Id.* at pp 3-4). In petitioner's memorandum accompanying his
12 motion for clarification, he references several motions related to his conviction that "are currently on
13 appeal before the Supreme Court of Nevada." (Docket #9, at p. 8).

14 Once again, petitioner is advised that he must first present his grounds for relief to the state court
15 before a federal court may review the merits of the issues he raises. To exhaust a claim, petitioner must
16 have "fairly presented" that specific claim to the Supreme Court of Nevada. *See Picard v. Conner*,
17 404 U.S. 270, 275-76 (1971); *Schwartzmiller v. Gardner*, 752 F.2d 1341, 1344 (9th Cir. 1984). This
18 means that all motions and appeals related to his conviction that are now pending in the state district
19 court and in the Nevada Supreme Court must be concluded before petitioner can file a federal habeas
20 petition. The federal habeas petition will be dismissed, without prejudice, as petitioner has not
21 exhausted his claims in state court.

22 **IT IS THEREFORE ORDERED** that petitioner's motion for clarification (Docket #7) is
23 **DENIED.**

24 **IT IS FURTHER ORDERED** that petitioner's motion reconsideration of the denial of
25 appointment of counsel (Docket #8) is **DENIED.**

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1 **IT IS FURTHER ORDERED** that this habeas petition is **DISMISSED WITHOUT**
2 **PREJUDICE** based on petitioner's failure to exhaust his grounds for relief in state court. The Clerk
3 shall enter judgment accordingly.

4 Dated this 21st day of May, 2008.

A handwritten signature in blue ink, appearing to read "L. Hicks", is written over a faint circular stamp.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE